

REMARKS

Summary Of Office Action

Claims 1-47 and 59-63 are pending in the above-identified patent application.

The Examiner objected to claims 28-31, 34, and 35 as being dependent upon a rejected base claim.

The Examiner rejected claims 1-9 under 35 U.S.C. § 102(e) as being anticipate by Wang et al. U.S. patent No. 6,129,637 (hereinafter "Wang"). Claims 1-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chen U.S. patent No. 5,577,964 (hereinafter "Chen"). Claims 1-15, 25, 32, and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freese U.S. patent No. 5,273,277 (hereinafter "Freese") in view of Chen. Claims 16-22, 36-39, and 63 were rejected under 35 U.S.C. § 103(a) as obvious over the cited art as applied to claim 1 and further in view of Garver U.S. patent No. 3,529,823 (hereinafter "Garver"). Claim 23 was rejected under 35 U.S.C. § 103(a) as obvious over the cited art applied to claim 19 and further in view of Setten U.S. patent No. 3,623,725 (hereinafter "Setten"). Claim 24 was rejected under 35 U.S.C. § 103(a) as obvious over the cited art as applied to claim 19 and further in view of Fraser et al. U.S. patent No. 5,746,667 (hereinafter "Fraser"). Claims 26 and 27 were rejected under 35 U.S.C. § 103(a) as obvious over the cited art applied to claim 1 and further in view of Culpepper U.S. patent No. 3,861,679 (hereinafter "Culpepper"). Claims 40-46 were rejected under

35 U.S.C. 103(a) as obvious over the cited art applied to claim 1 and further in view of Myers U.S. patent No. 3,893,669 (hereinafter "Myers"). Claims 59, 60, and 62 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freese in view of Schall. Claim 61 was rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall and further in view of Culpepper.

Summary Of Applicants' Reply to Office Action

Applicants have cancelled claims 36, 40, and 45 without prejudice. Claim 1 has been amended to incorporate the subject matter of cancelled claim 40. Claim 16 has been amended to more particularly define the invention. Claims 37, 41-43, and 46 have been amended to depend from claim 1, instead of from cancelled claims 36, 40, and 45, respectively.

The Examiner's objection and rejections are respectfully traversed.

The Rejections Of Claims 1-27, 32, 33, And 36-46

The Examiner rejected claims 1-9 under 35 U.S.C. § 102(e) as being anticipate by Wang. Claims 1-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chen. Claims 1-15, 25, 32, and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freese in view of Chen. Claims 16-22, and 36-39 were rejected under 35 U.S.C. § 103(a) as obvious over the cited art as applied to claim 1 and further in view of Garver. Claim 23 was rejected under 35 U.S.C. § 103(a) as

obvious over the cited art applied to claim 19 and further in view of Setten. Claim 24 was rejected under 35 U.S.C. § 103(a) as obvious over the cited art as applied to claim 19 and further in view of Fraser. Claims 26-27 were rejected under 35 U.S.C. § 103(a) as obvious over the cited art applied to claim 1 and further in view of Culpepper. Claims 40-46 were rejected under 35 U.S.C. 103(a) as obvious over the cited art applied to claim 1 and further in view of Myers.

The Examiner's rejections are respectfully traversed.

Claim 1

Applicants' invention, as specified by claim 1, is directed towards a ball hitting practice apparatus. The apparatus includes a substantially rigid member having a first and a second end. A ball mounting assembly is suspended from the second end of the substantially rigid member. A hinge that can be suspended from a frame is attached at or near the first end of the substantially rigid member. The hinge is arranged such that the substantially rigid member rotates about a substantially horizontal axis.

Applicants have amended claim 1 to further specify that the ball mounting assembly comprises a tether suspended from the second end of the rigid member and a ball mounting device suspended from the tether. This arrangement of the rigid member and tether, for example, enables a ball attached to the ball mounting device to simulate a number of different pitches (see

page 17, lines 1-5 of applicants' specification). The Examiner is invited to watch the short promotional video on the video tape enclosed with the Reply to Office Action mailed February 14, 2002 to see the benefits of such an arrangement.

The Rejection Of Claim 1 Based
On Wang Under 35 U.S.C. § 102(e)

In rejecting claim 1, the Examiner states that Wang "discloses a rigid member (41), a first hinge (411, 31, 32), and a ball mounting assembly (42)" (page 2 of the 3/11/02 Office Action). The Examiner, however, has failed to address the structural relationship of the elements of applicants' claim 1.

Claim 1 specifies a ball mounting assembly that is suspended from the second end of the substantially rigid member. An illustrative ball mounting assembly is shown in FIG. 1 of applicants' application. In FIG. 1, ball mounting assembly 25 is shown suspended from second end 19 of substantially rigid member 15. In addition, claim 1 has been amended to further specify that the ball mounting assembly comprises a tether suspended from the second end of the rigid member and a ball mounting device suspended from the tether.

In stark contrast, retainer 42 of Wang securely attaches to rod 41 in order to prevent golf ball 43 from separating from the rod when the golf ball is hit by a user. Therefore, Wang fails to disclose or suggest a ball mounting assembly that is suspended from the second end of a substantially

rigid member as required by claim 1. Moreover, Wang fails to disclose or suggest a ball mounting assembly that comprises a tether suspended from the second end of a rigid member and a ball mounting device suspended from the tether as required by claim 1.

Accordingly, for at least these reasons, claim 1 is allowable over Wang. Therefore, applicants request that the rejection of claim 1 based on Wang be withdrawn.

The Rejection Of Claim 1 Based
On Chen Under 35 U.S.C. § 102(b)

In rejecting claim 1, the Examiner states that "Chen discloses a rigid member (61), a first hinge (51, 52), and a ball mounting assembly (fig 7 - connector above item 70)" (pages 2 and 3 of the 3/11/02 Office Action). The Examiner, however, has failed to address the structural relationship of the elements of applicants' claim 1.

Chen relates to a golf ball tee device. A ball unit 60 includes a golf ball 70 and a connecting rod 61 (see column 3, lines 10-17 of Chen). While Chen fails to describe how golf ball 70 is connected to connecting rod 61, the connection must securely attach the golf ball to the connecting rod in order for the device to properly operate. This arrangement, however, is in contrast to applicants invention as defined by claim 1. Chen, therefore, fails to disclose or suggest a ball mounting assembly that is suspended from the second end of a substantially rigid member as required by claim 1. Moreover, Chen fails to disclose

or suggest a ball mounting assembly that comprises a tether suspended from the second end of a rigid member and a ball mounting device suspended from the tether as required by claim 1.

Accordingly, for at least these reasons, claim 1 is allowable over Chen. Therefore, applicants request that the rejection of claim 1 based on Chen be withdrawn.

The Rejection Of Claim 1 Over Freese
In View Of Chen Under 35 U.S.C. § 103(a)

Freese relates to a ball hitting training device with a horizontal hitting guide. Above the hitting guide, a ball is secured to flexible cable 58. The flexible cable is attached to and suspended from loop 54 of support element 50. The flexible cable is swingably secured to loop 54 using clevis 56.

The Examiner contends that it would have been obvious to employ connecting rod 61 of Chen with the apparatus of Freese to achieve applicants' invention. Contrary to the Examiner's contention, the proposed combination of Chen and Freese would fail to show or suggest all of the features of applicants' invention as defined by claim 1.

As discussed above, the end of connecting rod 61 of Chen is configured to securely attach to a golf ball. By employing connecting rod 61 with the apparatus of Freese in place of flexible cable 58 as suggested by the Examiner, the end of connecting rod 61 would be securely attached to ball 70. Therefore, the combination of Chen and Freese would fail to

disclose or suggest a ball mounting assembly that is suspended from the second end of a substantially rigid member as required by claim 1. Furthermore, the combination would fail to disclose or suggest a ball mounting assembly that comprises a tether suspended from the second end of a rigid member and a ball mounting device suspended from the tether as required by claim 1.

Moreover, Freese teaches away from such a combination. Freese teaches that a plastic tube or the like can be positioned around cable 58 to protect the cable and the bat in the remote event that the batter accidentally strikes the cable during a practice swing (see column 2, lines 30-33 of Freese). If connecting rod 61 of Chen were used in place of cable 58, there would be a greater likelihood of damage to either the rod or the bat if the batter accidentally struck the rod, regardless of whether a plastic tube was positioned around the rod or not. This is because connecting rod 61 of Chen is solid whereas cable 58 of Freese is flexible. Therefore, Freese teaches away from using a solid connector, such as connecting rod 61 of Chen, in place of cable 58.

Accordingly, for at least these reasons, claim 1 is allowable over Freese and Chen. Therefore, applicants request that the rejection of claim 1 based on Freese and Chen be withdrawn.

Claims 2-27, 32, 33, 37-39, 41-44, and 46

Claims 2-27, 32, 33, 37-39, 41-44, and 46 were variously rejected by the Examiner. Claims 2-27, 32, 33, 37-39, 41-44, and 46 are allowable at least because independent claim 1, from which claims 2-27, 32, 33, 37-39, 41-44, and 46 depend, is allowable. Accordingly, applicants request that the rejections of claims 2-27, 32, 33, 37-39, 41-44, and 46 be withdrawn.

Claims 36, 40, and 45

Claims 36, 40, and 45 were variously rejected by the Examiner. Claims 36, 40, and 45 have been cancelled without prejudice. Accordingly, applicants request that the rejections of claims 36, 40, and 45 be withdrawn.

Objection To Claims 28-31, 34, And 35

The Examiner objected to claims 28-31, 34, and 35 as being dependent upon a rejected base claim. Applicants note with appreciation the indication of allowable subject matter in claims 28-31, 34, and 35, and hereby expressly reserve the right to rewrite those claims in independent form should the base claims not ultimately be allowed.

In view of the foregoing, independent claim 1, from which claims 28-31, 34, and 35 depend, is allowable, and therefore claims 28-31, 34, and 35 are allowable. Accordingly, applicants request that the objection to claims 28-31, 34, and 35 be withdrawn.

The Rejections Of Claims 59-63

The Examiner rejected claims 59, 60, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Freese in view of Schall. Claim 61 was rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall and further in view of Culpepper. Claim 63 was rejected under 35 U.S.C. § 103(a) as obvious over the cited art as applied to claim 1 and further in view of Garver.

The Examiner's rejections are respectfully traversed.

Claim 59

Applicants' invention, as defined by claim 59, is directed towards a ball hitting practice apparatus for use by a hitter. The apparatus includes a frame comprising a base, a substantially vertical support structure secured to the base, and a substantially horizontal support structure that is secured to the substantially vertical support structure. A hinge is secured near a second end of the substantially horizontal support structure. The apparatus includes a substantially rigid member having an upper and a lower portion. The upper portion is secured to the hinge such that the lower portion rotates about a horizontal axis. A ball mounting assembly is suspended from the lower portion. The ball mounting assembly comprises a tether having an upper end and a lower end. The tether upper end is secured to the lower portion of the rigid member. A ball mounting device is secured to the tether lower end.

Schall discloses a swivel mounting unit for punching bags. The swivel unit includes a ball and socket connection that provides for a limited range of movement in any direction radially out of the axis of the swivel (see column 1, lines 1-18 of Schall). The design attempts to prevent the swivel from rattling and from becoming noisy in operation.

The Examiner contends that Freese discloses all of the elements of claim 59, except a hinge to permit the rigid member to rotate about a substantially horizontal axis (see page 8 of the 3/11/02 Office Action). Freese, however, fails to show or suggest a substantially rigid member as defined by claim 59. Rather, Freese refers to a flexible cable 58. A flexible cable, however, is not analogous to a substantially rigid member. Freese also refers to a plastic tube 74 that may be positioned around flexible cable 58. Plastic tube 74, however, merely protects the flexible cable in the event that a batter accidentally strikes the cable during a practice swing. The plastic tube provides no other function than to be a flexible sheath that protects the flexible cable and bat in case of contact. The plastic tube is positioned around the flexible cable and is not secured thereto. In contrast, the upper portion of applicant's substantially rigid member, as defined by claim 59, is secured to a hinge and a ball mounting assembly is suspended from a lower portion of the substantially rigid member. Accordingly, Freese fails to show or suggest a substantially rigid member (a) with an upper portion that is secured to a hinge

and (b) that suspends a ball mounting assembly from a lower portion as required by claim 59.

Moreover, Freese fails to show or suggest a ball mounting assembly that comprises (a) a tether with an upper end that is secured to the lower portion of the rigid member and (b) a ball mounting device secured to the lower end of the tether as required by claim 59.

The Examiner further contends that the hinge in Schall would make up for the deficiency in Freese. Contrary to the Examiner's contention, however, the combination of the hinge in Schall with the apparatus of Freese would still fail to show or suggest (a) a substantially rigid member with an upper portion that is secured to a hinge and a lower portion that suspends a ball mounting assembly and (b) a ball mounting assembly that comprises a tether with an upper end that is secured to the lower portion of the rigid member and a ball mounting device secured to the lower end of the tether as required by claim 59.

Accordingly, for at least these reasons, claim 59 is allowable over Freese and Schall. Therefore, applicants request that the rejection of claim 59 be withdrawn.


Claims 60-63

Claims 60-63 were variously rejected by the Examiner. Claims 60-63 are allowable at least because claim 59, from which claims 60-63 depend, is allowable. Accordingly, applicants request that the rejections of claims 60-63 be withdrawn.

Conclusion

In view of the foregoing, claims 1-35, 37-39, 41-44, 46 and 59-63 are in condition for allowance. This application is therefore in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,



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APPENDIX

(Showing How The Specification
Has Been Amended)

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MAIL ROOM

In The Claims

Please amend claims 1, 16, 37, 41-43, and 46 as follows:

1. (Amended) A ball hitting practice apparatus, said apparatus comprising:

a substantially rigid member having a first end and a second end;

a first hinge that can be suspended from a frame and attached at or near said first end such that said rigid member rotates about a substantially horizontal axis; and

a ball mounting assembly suspended from said second end of said member, wherein said ball mounting assembly comprises:

a tether suspended from said second end of said rigid member, and

a ball mounting device suspended from said tether.

16. (Amended) The apparatus of claim 1 wherein said ball mounting [assembly] device comprises:

at least one shaft; and

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at least one tubular member adapted to rotate around each of said at least one shaft, wherein said at least one tubular member allows for releasable mounting of a ball.

37. (Amended) The apparatus of claim [36] 1 wherein said ball mounting device comprises:

- a tube having a longitudinal axis;
- a plurality of extending shafts; and
- a plurality of tubular members adapted to rotate around each of said shafts, wherein said at least one tubular member allows for releasable mounting of a ball.

41. (Amended) The apparatus of claim [40] 1 wherein said tether is adjustable in length.

42. (Amended) The apparatus of claim [40] 1 wherein said tether comprises an elastic string.

43. (Amended) The apparatus of claim [40] 1 wherein said tether comprises a non-elastic string.

46. (Amended) The apparatus of claim [45] 1 wherein said tether has an upper end with an object attached and said second end of said rigid member has a passage adapted to hold said object until said tether has a tension that is greater than a threshold tension.

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